plaintiff, and the original bill of lading was indorsed by the defendant, consigning the shipment to the plaintiff. The shipment was lost somewhere en route, and the plaintiff sought to hold the defendant liable as an initial carrier. The court *held,* that the consignor had a right to stop the shipment *in transitu* and reconsign the shipment to the plaintiff, and that by such a reconsignment a new shipment originated on the lines of the defendant; further, the only contract of carriage in existence was made by the defendant, and this constituted it an initial carrier. *Myers & Co.* v. *Norfolk Southern Ry.* (N. C. 1916), 88 S. E. 149.

There is no question as to the right of a consignor after he has exercised the right of stoppage *in transitu,* to divert the shipment from the original destination, and order the goods to be rebilled to another point. *Atkinson etc. Ry* v. *Schrener,* 72 Kan. 550; *Ryan* v. *Great Northern Ry. Co.,* 90 Minn. 12; *Strahorn* v. *Ry.,* 43 Ill. 424. The CARMACK AMENDMENT defines the "initial" carrier to be "any common carrier, railroad, or transportation company receiving property for transportation from a point in one state to a point in another." The original shipment having been put to an end by the exercise of the right of stoppage *in transitu,* and a new contract of shipment having been made by rebilling the goods to a new destination, the principal case seems logical in holding that since this new shipment originated on the lines of the defendant, the defendant is an "initial" carrier within the meaning of the Act. The principal case is not in conflict with *Looney* v. *Ore. Short Line Co.,* 111 N. E. 508, noted above, or with *Hudson* v. *Chi. St. P. R.,* 226 Fed. 38, where the connecting carrier, issuing new bills of lading on its own initiative on a through shipment, was held not to be an "initial" carrier.

CARRIERS—WAIVER OF NOTICE AS DISCRIMINATION.—The plaintiff made interstate shipments of watermelons under bills of lading containing a provision that notice of claims for loss or damage should be made in writing within ten days after delivery, and if no claim was made within the time specified no carrier should be liable in any event. The property deteriorated through unnecessary delay in transportation, and the plaintiff brought this action for damages. The defendant contended that it was not liable as no claim for damages had been presented within the time specified in the bill of lading. Plaintiff contended that although no notice was given within the ten days as per bill of lading, yet the defendant had waived the right to insist on this defense, because the defendant had actual notice at the time of the loss, and also because when a claim was presented *after* the ten-day period, the defendant had received the claim without protest and had refused to pay, not on the ground that the claim had not been filed within the stipulated time, but only on the ground that it was not responsible for the delay in delivery which was the cause of the loss. *Held,* that the provision of the CARMACK AMENDMENT against unjust discriminations relates not only to the inequality of charges and inequality of facilities, but also to the giving of preferences by means of consent judgments or the waiver of defenses open to the carrier; and that

to permit the carrier to waive the defense in this case would open the door to preferences. BERGEN, J., dissented on the ground that by the "waiver of defenses" forbidden by the Act was intended only such defenses as are conferred by statute or by common law, and not a defense resting merely upon a contract, the terms of which depended upon an agreement with the shipper,—agreements which are neither uniform nor treat all alike; and that the facts of this case showed a waiver of the contractual defense. *Olivit Bros.* v. *Pa. Ry. Co.*, (N. J. 1916), 96 Atl. 582.

The prevailing opinion relies entirely upon *Phillips Co.* v. *Grand Trunk Ry.*, 236 U. S. 662, where the Supreme Court held that the Act forbade the "Waiver of defenses open to the carrier" as being a preference. In that case, however, the plaintiff sought to show a waiver of a Statute of Limitations relative to the filing of claims with the Interstate Commerce Commission. If the "waiver of defenses" prohibition laid down in the *Phillips* case refers not only to statutory and common law defenses,—as was held in the principal case,—but also to contractual defenses, then a long line of cases in the state courts have been erroneously decided. The state courts have generally held that although no claim has been presented within the specified time, yet the carrier may by subsequent conduct waive this contractual defense. In *Cheney Piano Co.* v. *N. Y. C. Ry.*, 148 N. Y. Supp. 108, the sending of a tracer and an invitation to present a claim after the expiration of the stipulated time, was held to be a waiver of the defense of want of due notice. Where the carrier knew of the damaged condition of the goods at the time of delivery, and after the expiration of the stipulated time, considered a claim for damages which it rejected on the merits, it was held to constitute a waiver. *Sauls-Baker Co.* v. *Atl. Coast Line Co.*, 98 S. C. 300; *Conrad-Schopp Fruit Co.* v. *Pittsburg Ry.*, 43 Pa. Super. Ct. 481. Where the carrier, after the time limit had expired, corresponded with the shipper as to the merits of the claim, and then rejected the claim, not on the ground of want of due notice, but on the ground of non-liability, it was held to constitute a waiver. *Post & Woodruff* v. *Atl. Coast Line*, 138 Ga. 763; *Peninsula Produce Exchange* v. *N. Y. &c. Ry.*, 122 Md. 231; *Banks* v. *Pa. Ry.*, 111 Minn. 48, 126 N. W. 410; *Isham* v. *Erie Ry.*, 98 N. Y. Supp. 609; see also 14 MICH L. REV. 244. In none of these cases is there any intimation that a waiver of a want of due notice defense would be a preference forbidden by the CARMACK AMENDMENT. The dissenting view seems to be the more logical opinion, because if the carrier is not permitted to waive a defense arising out of a contract, and may stipulate for a five-day notice period with one shipper and a six-months period with another, the grossest kind of discrimination and preference would thereby result. To prevent such discrimination, carriers must be required to make identical contracts with all shippers. The tendency of judicial interpretation is, however, towards the narrow and strict interpretation applied in the principal case, as is shown by a recent case in the United States Supreme Court. In *United States* v. *Union Mfg. Co.*, 36 Sup. Ct. 420, the consignee was indicted under a Federal Statute, for falsely understating the weight of a shipment of lumber, and convicted,

although the representations were made after the property had been delivered and during the adjustment of freight charges. The indictment was justified on the ground that underbilling is a form of securing preferences.

COVENANTS.—RESTRICTIONS ON LAND ACQUIRED BY ACCRETION.—Defendant company platted and sold lots, covenanting to keep free from all buildings a certain area bordering on the Atlantic Ocean. This area was enlarged by accretion and the defendant company was about to erect buildings on the added land. Plaintiffs, who were lot owners, sought an injunction to restrain the erection of these buildings. *Held,* that the restriction upon use of land fronting on navigable waters extended over lands afterwards acquired by accretion. *Bridgewater* v. *Ocean City Ass'n.* (N. J. Eq. 1915), 96 Atl. 905.

This particular question appears to be raised here for the first time. However, other questions fundamentally the same have been ruled upon. It has been held that land formed by accretion is subject to an outstanding lease upon the land to which the accretion adheres. See *Cobb* v. *Lavalle,* 89 Ill. 331; *Williams* v. *Baker,* 41 Md. 523. It has also been held that a widow is entitled to her dower in accretions. *Lombard* v. *Kinzie,* 73 Ill. 446. Accretions are held to be subject to an easement upon the land to which the accretion is made. *People* v. *Lambier,* 5 Denio (N. Y.) 9. There is also dictum to the effect that in such cases accretions are subject to liens and mortgages. *Cobb* v. *Lavalle,* 89 Ill. 331. If the statute of limitations has run partially against an owner's right to recover land originally existing, it is held that his right to recover the newly formed land is liable to be barred within the same time. See *Bellefontaine Co.* v. *Niedringhaus,* 181 Ill. 426; and *Benne* v. *Miller,* 149 Mo. 228. See also *Schmidt* v. *Supply Co.* (N. J.), 184 Atl. 807.

CONSTITUTIONAL LAW.—INCOME TAX.—A stockholder of the Union Pacific Railroad Company brought a bill in equity to restrain the directors of that company from paying the income tax levied under the authority of an Act of Congress, October 3rd, 1913, alleging in general that the law was unconstitutional. The statute in question was passed by Congress pursuant to the Sixteenth Amendment, which is as follows: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." It was contended that all income taxes must be precisely of the kind authorized by the technical terms of the Amendment, or else be subject to the rule of apportionment; that in effect the Amendment took a certain type of direct taxes and prevented the requirement for apportionment from operating upon them; that when the Amendment authorized a tax upon incomes "from whatever source derived," a classification of incomes is not permitted and an income law which excludes some persons or property does not fall within its terms and therefore such a law remains in the class of direct taxes. It was *held* that the con-